

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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**DEMOND MEEKS ,**

**Plaintiff,**

**v.**

**CITY OF ROCHESTER, et al.**

**Defendant.**

**ATTORNEY  
AFFIRMATION IN IN  
RESPONSE TO MOTION  
FOR PROTECTIVE  
ORDER**

**22-cv-6163**

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Spencer L. Ash, Esq, duly affirms under penalty of perjury:

1. I am an attorney with the City of Rochester, admitted to practice law in this State, and I represent the defendant City of Rochester in this matter. I am fully familiar with all of the facts and circumstances surrounding this matter, including those set forth herein.

2. This Affirmation is submitted in support of the City's motion in Response to Plaintiff's Motion for a Protective Order.

3. Mr. Shields' papers fail to address his untenable position that the ECF 5-1 should be sealed, particularly in light of the relevant content it contains concerning the bad faith of Mr. Shields' related Remand application.

4. Indicative of that bad faith, Defendants have recently stipulated that they would not oppose remand or sealing should Mr. Shields withdraw his costs application. That representation was made explicitly by email on April 13, 2022.

5. However, like his former motion, instead of negotiating in good faith with the City, Mr. Shield prefers a gratuitously adversarial tact with an eye on recovering cost for nearly every motion. Instead of responding to the City's offer, Mr. Shield immediately filed the current motion.

6. Mr. Shields never addressed the legal defect of pleading Failure to Intervene as a state law claim, and never attempted to cure said defect. The City advised Mr. Shields to simply re-amend his Complaint and he refused.

7. Currently, he has failed to provide any case law citing why the subject email should be sealed, preferring instead to litigate the merits of unrelated protest cases and ADR rules.

8. Mr. Shields could have avoided motion practice by amending his Complaint. He refused.

9. Mr. Shields could have avoided the current Protective Order by agreeing to withdraw his cost application. Instead, he seeks to bolster that application with more gratuitous motion practice.

10. Instead of addressing the legal merits of the relief he seeks by two separate motion at the pleading stage, Mr. Shields has chosen to grand stand and attack the City's "cavalier" attitude for the federal rules.

11. At all stages in this litigation the City has reached out to Mr. Shields and attempted resolve this litigation in a civil manner. Our outreach began with early settlement discussions, continued with detailed explanations as to why the City believed he incorrectly pled the Failure to Intervene Claim, and continued this week with the City attempting to mediate the current dispute short of motion hearings—this latest effort was met with a typically unreasonable refusal and ultimately silence.

12. The current motion is gratuitous and vexatious.

**WHEREFORE**, Plaintiff's motion is frivolous and should be denied.

Dated: April 14, 2022

LINDA S. KINGSLEY –  
CORPORATION COUNSEL

s/Spencer L. Ash

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